

REMARKS

The Examiner asserts that restriction of the pending claims into one of the following four groups is required under 35 U.S.C. § 121:

- I. Claims 1, 3, 8, 10, 15, 17, 22, 24 and 34-35, drawn to antibodies.
- II. Claims 4, 11, 18, 25, and 32-33, drawn to DNA.
- III. Claims 38 and 44, drawn to a method of prevention.
- IV. Claim 45, drawn to methods of detection.

The Examiner asserts that the inventions are distinct from each other, and states that applicant must elect one group of inventions for examination.

Applicants traverse the proposed restriction between the inventions of Groups I, III and IV. For a restriction between patentably distinct inventions to be proper, the inventions must be independent or distinct as claimed and also must pose a serious burden on the Examiner if examined together. MPEP § 803. “[I]f the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to distinct or independent inventions.” *Id.*

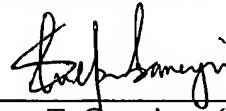
The claims of proposed Group I are directed to antibodies or an antigen-fragment thereof that binds *S. pneumoniae* PPS-3. The claims of proposed Groups III and IV are directed to methods comprising the antibodies of Group I. A search conducted for proposed Group I would necessarily be co-extensive with a search for Groups III and IV; no additional searches are required. The grouping of proposed Groups III and IV with proposed Group I,

thus, poses no additional search burden, much less a serious search burden on the Examiner. Accordingly, Groups I, III and IV should be examined together.

Applicants request that the claims of Groups I, III and IV be examined together because there is no serious search burden for the Examiner to examine the subject matter of these three groups together. However, pursuant to 37 C.F.R. § 1.143, under the groups drawn by the Examiner, applicants provisionally elect, with traverse, the claims of Group I for initial substantive examination.

This election is made expressly without waiver of applicants' rights to continue to prosecute and to obtain claims to the non-elected subject matter either in this application or in other applications claiming priority herefrom.

Respectfully submitted,



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